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SUPREME COURT, U.S.

No. 06-1489

In The Supreme Court of the United States

MARIA GENOVEVA ANAYA, MARIO ANAYA, EDUARDO ANAYA, JESSICA ANAYA and AYDHEE ANAYA,

Petitioners,

v.

TRAYLOR BROS., INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF

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Petitioners file this reply to address certain issues raised in Traylor Brothers, Inc.'s Brief in Opposition to Petitioners' Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Petitioners first address selected legal issues, and then factual issues.

A. Respondent Misconstrues Relevant Legal Standards

In attempting to distinguish *Davis v. Department of Labor*, 317 U.S. 249 (1942), from the present case, Respondent makes a false distinction between the Washington statute in *Davis* and Texas Labor Code Section 406.091. Respondent suggests that the statutes differ because the Washington statute includes "workers engaged in maritime employment," and the Texas statute excludes "any person covered by a federal compensation scheme like the LHWCA." Br. Opp. at 11. In fact, the relevant aspect of the Washington statute is not which workers it includes, but which workers it *excludes*. The statute excludes maritime workers "for whom no right or obligation exists under the maritime laws." *Davis*, 317 U.S. at 252. It is this latter clause which makes the Washington statute functionally indistinguishable from Section 406.091. *Compare Davis*, 317 U.S. at 252 (Washington statute excluded state coverage of maritime workers "for whom no right or obligation exists under the maritime laws.") and Tex. Labor Code § 406.091 (excluding coverage of "a person covered by a method of compensation established under federal law."). The only difference between the two statutes is semantic: one says that state law applies only if federal law does not, and the other says that state law does not apply if federal law does. Logically, these statements are identical: X only if not Y = If Y, then not X.

Respondent also argues that Texas law prohibits concurrent "twilight zone" coverage because Section 406.091 is designed to prevent receipt of dual benefits from both the federal and state schemes. Br. Opp. at 7 (§ 406.091 "does not allow for there to be overlapping-concurrent coverage between the TWCA and any federal workers' compensation scheme . . . . [T]he court correctly applied a state statute which precludes overlapping maritime workers' compensation."). Here, Respondent appears to confuse the concepts of concurrent *availability* of alternative systems, which neither federal nor Texas law precludes,[1] with the concurrent or dual *receipt* of benefits, which both statutes preclude. Respondent's argument is irrelevant because the twilight zone jurisprudence does not result in receipt of dual benefits; it results in an election between the two schemes. Like Texas statute § 406.091, the Washington statute at issue in *Davis* was designed to prevent double recovery.[2] This did not prevent the existence of a "twilight zone" in *Davis*; thus, rules designed to prevent double recovery of benefits from different systems are not a factor in the "twilight zone" analysis.

B. Respondent Incorrectly States Underlying Facts

Respondent repeatedly claims that the Texas Workers' Compensation Commission ("Commission") rejected the

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[1] *See* Pet. at 10-12.

[2] *See* Pet. at 13-14; *See Gorman v. Garlock, Inc.*, 118 P.3d 311, 317 (Wash. 2005) ("[T]he WIIA exempts from its coverage Washington workers covered by certain federal workers' compensation statutes, including the LHWCA. . . . The legislature's intent in excluding LHWCA-covered workers from the WIIA was to prevent double recovery by [such a] worker").

application of the "twilight zone" jurisprudence to this case. Br. Opp. at 5, 8, 12-13. This is incorrect. The Commission decision does not mention the "twilight zone" theory or any other federal case law. (CR 338-42). The "twilight zone" issue was not before the Commission.

Respondent claims that the Anayas sought and "elected" to "accept" benefits under the LHWCA. Br. Opp. at 2-3. Since the lower courts' decisions did not turn on whether the Petitioners applied for or accepted benefits under the LHWCA, this is irrelevant. However, to the extent that this issue may be deemed pertinent, Respondent's assertions are contrary to the record. Petitioners applied for benefits under the Texas Workers' Compensation Act ("TWCA") using Commission forms, and their application was accepted by the Commission.[3] Respondent's carrier responded pursuant to the TWCA.[4] The payments sent to Petitioners did not suggest that Respondent or its carrier contended the payments were made pursuant to the LHWCA.[5] In February 2005, more than three months after

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[3] *See* Petitioners Form 1 WCC-42, a Commission form. It instructs the applicant to "file this form with the Texas Workers' Compensation Commission." (CR 305-06). The Commission's receipt of Petitioners' application is reflected by a TWCC file number and by the "RECEIVED TWCC" stamp at the bottom of the first page. (*Id.*).

[4] Respondent's workers' compensation carrier, St. Paul Travelers, advised Petitioners of the amount of death benefits under the TWCA. (CR 308). It paid for Mr. Anaya's pre-death medical care according to "state fee schedule guidelines" and pursuant to the TWCA. (CR 310-13).

[5] The checks that Respondent's carrier sent to the Petitioners contained no notation or suggestion that they were being sent pursuant to the LHWCA (*see* Record Excerpts in Court of Appeals, Tab 8), and thus provided no notice to Petitioners that Respondents contended that they were cashing anything other than the TWCA benefits for which they had applied.

Respondent's carrier began to make payments, Respondent's carrier sent to the Commission a form titled "Payment of Compensation or Notice of Refused/Disputed Claim" in which Respondent's carrier claimed that "[b]enefits are being paid under the Longshore and Harbors Workers Compensation Act." (CR 314).[6] Petitioners have never accepted the contention of Respondent or its carrier that payments were due or properly made under the LHWCA. *See* Affidavit of Maria Genoveva Anaya (CR 302-03). Petitioners continued to accept payments because they were entitled to them under the TWCA.

Respondent also asserts that Petitioners "filed a request with the [Commission] requesting a termination of their LHWCA benefits in favor of benefits under the TWCA." Br. Opp. at 3. To the contrary, the evidentiary record shows that the Commission proceeding was initiated by Respondent when it filed its "Notice of Refused/Disputed Claim" form, contesting Petitioners' right to receive benefits under the TWCA. (CR 314).[7]

Also, Respondent's carrier was the same entity with respect to both TWCA and LHWCA coverage, so the identity of the payor provided no signal as to whether payments were sent under the TWCA or LHWCA. (CR 83, 150).

[6]Unless Petitioners were receiving benefits under the TWCA, there would have been no reason for Respondent to initiate a "dispute" challenging Petitioners' right to receive benefits under the TWCA.

[7]When Respondent filed its notice disputing Petitioners' right to receive benefits under the Act, this created a "benefit dispute," defined under the Texas Administrative Code as "[a] disputed issue arising under the Texas Workers' Compensation Act (the Act) in a workers' compensation claim regarding compensability or eligibility for, or the amount of, income or death benefits." 28 TEX. ADMIN. CODE § 140.1(1). The dispute between Respondent and Petitioner was resolved in a "benefit contested case hearing" (CR 339), a procedure authorized under Section 140.1(2).

CONCLUSION

Petitioners' Petition for Writ of Certiorari shows that the "twilight zone" jurisprudence established in *Davis* applies to the present case, rendering improper the district court's dismissal of the Petitioners' claims. Respondent's response provides neither a plausible distinction of *Davis* nor a basis for applying Texas Labor Code § 406.091 to preclude application of the "twilight zone."

For the foregoing reasons, and for the reasons set out in Petitioners' petition, a writ of certiorari should be granted.

Respectfully submitted,

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